

## Legislative Bulletin.....September 14, 2005

### Contents:

**H.R. 3132** — Children's Safety Act of 2005

### Summary of the Bills Under Consideration Today:

**Total Number of New Government Programs:** Several, noted below

**Total Cost of Discretionary Authorizations:** \$500 million over five years

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** Several, noted below.

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

## H.R. 3132 — Children's Safety Act of 2005 (Sensenbrenner)

**Order of Business:** The bill is scheduled for consideration on Thursday, September 15<sup>th</sup>, subject to a modified open rule ([H. RES. 436](#)), allowing for only those amendments preprinted in the Congressional Record to be considered.

**Summary:** H.R. 3132 would make modifications to the national sex offender registration program, expand the use of DNA to identify and prosecute sex offenders, increase penalties for sexual offenses against children, and make other modifications and expansions of federal law relating to child safety.

**Title I: Sex Offender Registration and Notification Act.** Establishes a “comprehensive national system for the registration of sex offenders:”

## **Subtitle A – Sex Offender Registration and Notification Program**

### **Sec. 112:**

- Requires each jurisdiction to maintain a jurisdiction-wide sex offender registry and specifies the requirements for the registry.

### **Sec. 113:**

- Requires a sex offender to register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student;
- Requires the sex offender to initially register 1) before completing a sentence of imprisonment which required registration and 2) not later than 5 days after being sentenced for that offense if the sex offender is not sentenced to a term of imprisonment;
- Requires a sex offender to inform each jurisdiction involved, not later than 5 days after each change of residence, employment, or student status;
- Requires each jurisdiction to provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year, for the failure of a sex offender to comply with the requirements of this title.

### **Sec. 114:**

- Specifies the information that the sex offender must provide when registering with authorities to include: the offender's social security number, the address and location of their residence, employer, license plate number, photograph, and DNA sample.

### **Sec. 115:**

- Requires the jurisdiction in which the sex offender registers to keep the registration current for life if the offense is against a minor, a serious sex offense or a second misdemeanor sex offense against a minor; and for 20 years in every other case.

### **Sec. 116:**

- Requires the sex offender to appear in person at least once every six months to verify their registry on file.

### **Sec. 117:**

- Requires that the sex offender be notified of their responsibilities to register prior to release from custody and immediately after sentencing for the offense requiring the duty to register.

### **Sec. 118**

- Requires the residence of each registered sex offender to be verified at least monthly; requires address verification quarterly for sex offenders required to register because of a misdemeanor sex offense against a minor.

### **Sec. 119**

- Directs the Attorney General to maintain a national database at the FBI for each sex offender and other person required to register in a jurisdiction's sex offender registry, referred to as the National Sex Offender Registry.

### **Sec. 120:**

- Directs the Attorney General to maintain a public website providing information where information on each sex offender may be obtained "by a single query."

### **Sec. 122:**

- Requires officials within the local jurisdiction in which a sex offender has registered to provide the latest registry information to various local, state, and federal agencies and entities within 5 days after their registration.

**Sec. 126:**

- Directs the Attorney General, when a local jurisdiction “does not have a minimally sufficient sex offender registration program,” to carry out the duties imposed on that jurisdiction.

**Sec. 127:**

- Requires that the provisions of this title be implemented within two years of enactment, but allows the Attorney General to grant a one-year extension.

**Sec. 128:**

- Stipulates that jurisdictions that fail to implement the provision in this title will not receive 10 percent of the funds that would normally be allocated for that fiscal year to the jurisdiction under the Byrne Program and the Local Government Law Enforcement Block Grants (LLEBG) program. Allows for funds that were not allocated due to not compliance of this title be redirected to jurisdictions that are in compliance.

**Sec. 129:**

- Allows the Attorney General to award a “bonus payment” to jurisdictions that have implemented the provisions in this title within two years of enactment, and specifics the amount of the bonus;
- *Authorization of Appropriations:* Authorizes such sums as necessary for FY06-FY10 for the Sex Offender Management Assistance (SOMA) program.

**Sec. 130:**

- Directs the Attorney General to carry out a new demonstration project to make grants to jurisdictions to test electronic monitoring devices in the SOMA program, and stipulates that no more than 10 jurisdictions may participate;
- *Authorization of Appropriations:* Authorizes such sums as necessary to carry out this provision.

**Sec. 131:**

- Requires that laws and policies be implemented to electronically monitor a person convicted of a state sex offense in which the victim was under 18 years old;
- Requires electronic monitoring for the life of the person if the victim was under the age of 12, or the sex offender has a prior sex conviction; in other cases, requires electronic monitoring for the period of probation or parole;
- Allows the Attorney General to make a bonus payment within three years after enactment to a state that has enacted the specified electronic monitoring laws, and specifies the amount of the bonus.

**Sec. 132:**

- Requires that the National Center for Missing and Exploited Children (Center) has access to the Interstate Identification Index, stipulates under what conditions the Index is to be used and by whom, and stipulates that personnel of the Center will not be liable for any misuse of information within the Index if used in good faith;
- Provides that personnel of Center are not liable for any civil or criminal action for damages directly related to the performance of its CyberTipline responsibilities, with specified exceptions.

## **Subtitle B – Criminal Law Enforcement of Registered Requirements**

### **Sec. 151:**

- Provides that a sex offender who has been duly notified of their requirement to register and who knowingly fails to register under the Sex Offender Registration and Notification Act will be fined and imprisoned not less than 5 years nor more than 20 years.

### **Sec. 152:**

- Directs the Attorney General to assist states and other jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements;
- *Authorization of Appropriations:* Authorizes such sums as necessary for FY06-FY08 to implement this section.

### **Sec. 153:**

- Allows the Attorney General to make grants to states, local governments, Indian tribal governments, and other public and private entities to assist in enforcing sex offender registration requirements;
- *Authorization of Appropriations:* Authorizes such sums as necessary for FY06-FY08 to implement this section.

### **Sec. 154:**

- Allows for an additional prison sentence of 10 years or more for anyone that “knowingly uses a controlled substance to substantially impair the ability of a person to appraise or control conduct, in order to commit a sex offense.”

### **Sec. 155:**

- Repeals the Predecessor Sex Offender Program (42 U.S.C. 14071 and 14072).

**Title II: DNA Fingerprinting.** Expands the use of DNA to identify and prosecute sex offenders.

### **Sec. 202:**

- Permits the Attorney General to collect DNA samples “from individuals who are arrested, detained, or convicted under the authority of the United States.”

### **Sec. 204:**

- Directs the Attorney General to publish within 60 days of enactment a “model code setting forth procedures to be followed by law enforcement officers when investigating a missing person or a death. The procedures shall include the use of DNA analysis to help locate missing persons and to help identify human remains.”

**Title III: Prevention and Deterrence of Crimes Against Children Act of 2005.** Increases penalties for violent crimes against children.

### **Sec. 302:**

- Stipulates mandatory minimum prison sentences for persons convicted of a felony crime of violence against a person under the age of 18 as follows:
  - a sentence of death or life imprisonment if the crime of violence results in the death of a person under 18 years old,

- a sentence of at least 30 years or life imprisonment if the crime of violence is kidnapping, aggravated sexual abuse, sexual abuse, or maiming, or results in serious bodily injury,
- a sentence of at least 20 years or life imprisonment if the crime of violence results in bodily injury or is an abusive sexual contact offense (both defined in statute),
- a sentence of at least 15 years or life imprisonment if a dangerous weapon was used during and in relation to the crime of violence, and
- a sentence of at least 10 years or life imprisonment for any other case.

**Sec. 303:**

- Imposes time limits and other specific limits on federal courts' review of habeas corpus petitions that challenge a state-court conviction for killing a child. In the district court, parties will be required to move for an evidentiary hearing within 90 days of the completion of briefing, the court must act on the motion within 30 days, and the hearing must begin 60 days later and last no longer than 3 months. All district-court review must be completed within 15 months of the completion of briefing. In the court of appeals, the court must complete review within 120 days of the completion of briefing.

**Title IV: Protection Against Sexual Exploitation of Children Act of 2005.** Increases penalties for sexual offenses against children.

- Increases the mandatory minimum sentence for a conviction of aggravated sexual abuse of a child by requiring imprisonment for at least 30 years or for life, instead of "any term of years or life, or both" as current law stipulates.
- Expands the minimum term of imprisonment to at least 10 years and not more than 25 years if the sexual contact was a sexual act (as defined in statute).
- Expands the minimum term of imprisonment and penalty, for a person who engages in a sexual offense that results in the death of a person under the age of 12, to be imprisoned for at least 30 years or for life or punished by death.
- Expands the "aggravating factors for homicide" that may warrant the death penalty to include "sexual abuse resulting in death."
- Expands the terms of imprisonment for sexual exploitation of children to "25 years or for life" instead of "15 years nor more than 30 years."
- For one or two prior convictions, expands the terms of imprisonment from 25-50 years to life imprisonment.
- Expands the punishable offenses relating to the exploitation of children by replacing the term "sexual exploitation of children" with "aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale distribution, shipment, or transportation of child pornography."
- Expands the punishable offenses relating to material involving the sexual exploitation of children, and lengthens the minimum terms of imprisonment for various offenses related to child pornography and sex trafficking of children.
- Expands the minimum term of imprisonment for using misleading domain names to direct children to harmful material on the internet from four years to at least 10 and not more than 30 years.

- Expands the list of offenses which are punishable by mandatory life imprisonment to include travel with intent to engage in illicit sexual conduct, illicit sexual conduct in foreign places, and the use of interstate facilities to transmit information about a minor.”

**Title V: Foster Child Protection and Child Sexual Predator Deterrence.** Increases requirements when processing adoption or foster care applications and increased penalties for sex abuse and child prostitution.

**Sec. 502:**

- Requires that background checks be performed on any prospective foster or adoptive parent and on any other adult living in the home of the prospective parent before approval of any foster or adoptive placement. Also requires that the National Crime Information Database and state child abuse registries are checked prior to approval;
- Repeals the “opt-out” provision that allowed the governor of a state to opt out of the required criminal record check of prospective foster and adoptive parents.

**Sec. 503:**

- Allows the Attorney General, upon the request of the governor of a state, to allow access to the federal crime information database to child welfare agencies to carry out criminal history record checks. Stipulates certain conditions and safeguards for access and imposes penalties for improper use or dissemination of the information.

**Sec. 504:**

- Increases the mandatory minimum prison sentence to at least 10 years and not more than 30 years for sex offenders who induces or coerces any individual to travel in interstate or foreign commerce to engage in prostitution or other criminal sexual activity.

**Sec. 505:**

- Increases mandatory minimum prison sentences for conduct relating to child prostitution.

**Sec. 506:**

- Increases mandatory minimum prison sentences for conduct relating to aggravated sexual abuse.

**Sec. 507:**

- Allows a court to order, as a condition of supervised release for a convicted sex offender who is required to register as such, that the person submit to a full bodily and property search at any time without a warrant by any law enforcement or probation officer with reasonable suspicion of a violation of probation;
- Deems the confidential marital communication privilege and the adverse spousal privilege inapplicable in any federal proceeding in which a spouse is charged with a crime against a child of either spouse or a child in the custody of either spouse.

**Amendments:** Amendments made in order under the rule will be summarized in a separate RSC document.

**Committee Action:** H.R. 3132 was introduced on June 30, 2005, and referred to the Committee on the Judiciary. The bill was considered and a mark-up session held on July 27, 2005, and it was passed out of Committee by a vote of 22-4 (H. Rept. [109-218](#), Part I). It was referred to the House Ways and Means Committee, which took no action.

**Cost to Taxpayers:** CBO estimates that implementing “H.R. 3132 would cost about \$500 million over the FY06-FY10 period. Enacting the bill could affect direct spending and receipts, but CBO estimates that any such effects would not be significant.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes. The bill implements and expands various child safety programs and increases the federal role in law enforcement.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes. According to CBO, “H.R. 3132 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by eliminating the ability of states to opt out of federal requirements to conduct background checks and make alternative placements in the foster care program. CBO estimates that the cost of that mandate would not exceed the threshold established in UMRA (\$62 million in 2005, adjusted annually for inflation).

“The bill also would add additional requirements for state, local, and tribal governments for them to receive full funding from three existing grant programs. CBO estimates that \$120 million would be available over fiscal years 2006-2010 for those governments to meet the new requirements and establish new programs, assuming appropriation of the estimated amounts. Any additional costs to those governments would be incurred voluntarily as a condition of receiving federal aid.

“H.R. 3132 would impose private-sector mandates, as defined in UMRA, on individuals who have been arrested or detained for federal offenses and on individuals who have been convicted of or adjudicated for certain sex offenses. CBO estimates that the aggregate direct costs of the mandates would be not be large and would fall well below the annual threshold established by UMRA for private-sector mandates (\$123 million in 2005, adjusted annually for inflation).”

**Constitutional Authority:** The Committee Report, H. Rept. [109-218](#), cites constitutional authority for this legislation in Article 1, Section 8 of the Constitution, but fails to cite a specific Clause.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

**RSC Staff Contact:** Derek V. Baker; [derek.baker@mail.house.gov](mailto:derek.baker@mail.house.gov); 202-226-8585

---

This document was created with Win2PDF available at <http://www.daneprairie.com>.  
The unregistered version of Win2PDF is for evaluation or non-commercial use only.